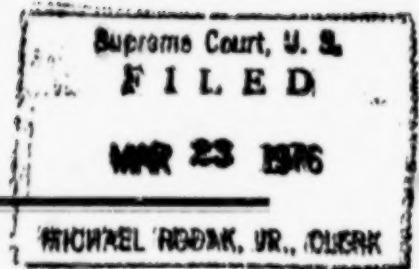


No. 75-1105



IN THE  
**Supreme Court of the United States**  
OCTOBER TERM, 1975

McCANN L. REID, *Petitioner*,  
v.  
MEMPHIS PUBLISHING COMPANY, *Respondent*.

**REPLY BRIEF FOR PETITIONER**

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**REPLY BRIEF FOR PETITIONER**

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Petitioner McCann L. Reid hereby replies to the brief of Memphis Publishing Company in opposition to the petition for a Writ of Certiorari to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit.

1. Respondent has not drawn the Court's attention to the fact that on March 1, 1976, after the filing of this petition, the Court granted certiorari to review *Parker Seal Co. v. Cummins*, 516 F.2d 544 (6th Cir. 1975) (No. 75-478). *Cummins* involves some, but not all, of the questions presented here. This case and *Cummins* were, however, decided by different panels of the Sixth Circuit, and the two opinions display radi-

cally different attitudes toward the various questions of law and policy that are presented here.

The grant of certiorari in *Cummins* confirms the importance of review here. The conflict between *Cummins* and this case was a principal basis urged by petitioner in *Cummins* for certiorari,<sup>1</sup> and that conflict will necessarily be considered carefully by this Court when it reviews *Cummins*. The Court cannot adequately resolve the urgent questions presented here unless it has both cases before it. These cases involve subtle and important issues regarding the protection of First Amendment rights and the eradication of religious discrimination. The resolution of such issues will be facilitated if the Court has before it all of the legal and factual issues upon which the Sixth Circuit has divided.

It will not be possible to resolve this case merely by remanding it when *Cummins* is decided. This case, unlike *Cummins*, involves important issues regarding the award of attorneys' fees. As shown in the petition, the two courts below created a rigid and arbitrary standard for the award of attorneys' fees that is directly inconsistent with (1) Congress' purposes in the enactment of Title VII, and (2) the instructions of this Court in connection with identical statutory provisions for the award of attorneys' fees. Unless review is granted by this Court, the standards applicable to the award of attorneys' fees in Title VII cases will continue to be blurred and confused.

Review is obviously warranted here. It was this case, and not *Cummins*, that repudiated employees' First Amendment rights and abandoned previously-accepted

<sup>1</sup> Petition for Certiorari at 22-24.

principles for the accommodation of religious practices. As shown in the petition, at 12-13, the opinion of the Court of Appeals in this case is in conflict, not merely with *Cummins*, but with numerous other cases in the Sixth Circuit and other courts of appeals. The Eighth Circuit has, for example, expressly and unequivocally rejected the Sixth Circuit's opinion in this case. *Hardison v. Trans World Airlines, Inc.*, 527 F.2d 33, 38 n. 5 (8th Cir. 1975). It was this case, and not *Cummins*, that has created confusion and uncertainty in the law relating to religious discrimination. If review is to be given in *Cummins*, *a fortiori* the rigid and grudging rules announced in this case should be reviewed by this Court.

2. Respondent's suggestion that this case cannot be fully reviewed is without merit. The opinion of the Court of Appeals involved a series of serious errors, all of which may readily be reviewed. First, the Court of Appeals overturned the trial court's judgment for petitioner even though, contrary to the EEOC Guideline and the 1972 Amendments to the 1964 Civil Rights Act, respondent made no effort at all to accommodate its work schedules to petitioner's religious practices. (App. 22a.) Second, the Court of Appeals rejected the trial court's "carefully considered judgment" (App. 24a), and disregarded its finding that an accommodation would not have caused "any added expense of any kind" to respondent. (App. 35a.) "Astonishingly," the majority of the Court of Appeals accepted the respondent's factual claims (App. 24a), and held, contrary to the trial court's findings, that an accommodation with petitioner's religious practices might have resulted in "hardship" to respondent. The majority indulged in such speculations although respondent in

fact made “*no effort whatsoever*” to accommodate petitioner’s religious observances. (App. 22a) (emphasis in original). Each of these errors requires review by this Court to vindicate the First Amendment rights of petitioner and numerous other persons.

#### CONCLUSION

The petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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